

SURROGACY- A Boon to The Childless:

By- NEHA SUKHYANI

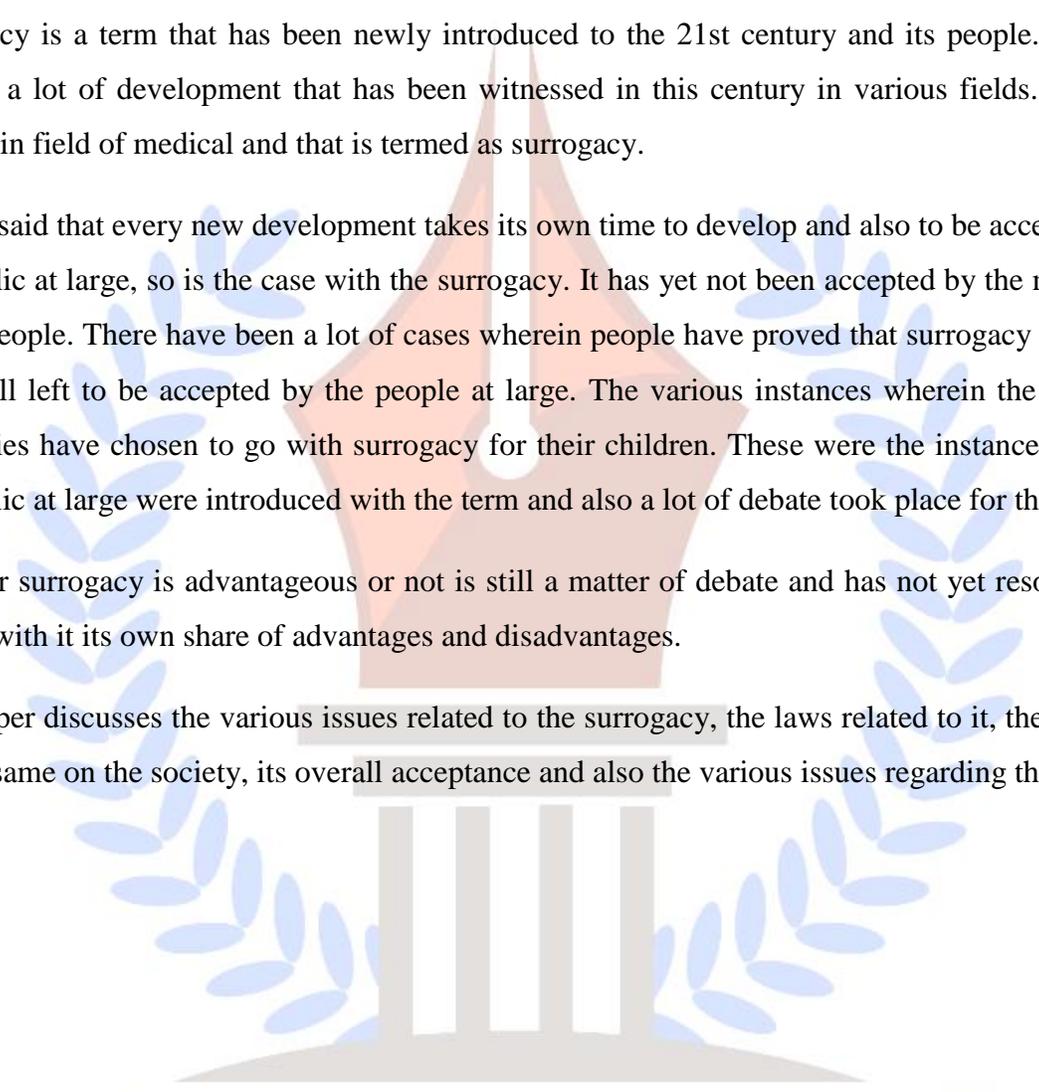
Abstract:

Surrogacy is a term that has been newly introduced to the 21st century and its people. Today, there is a lot of development that has been witnessed in this century in various fields. One of them is in field of medical and that is termed as surrogacy.

As it is said that every new development takes its own time to develop and also to be accepted by the public at large, so is the case with the surrogacy. It has yet not been accepted by the majority of the people. There have been a lot of cases wherein people have proved that surrogacy is still a term still left to be accepted by the people at large. The various instances wherein the famous celebrities have chosen to go with surrogacy for their children. These were the instances where the public at large were introduced with the term and also a lot of debate took place for the same.

Whether surrogacy is advantageous or not is still a matter of debate and has not yet resolved. It carries with it its own share of advantages and disadvantages.

This paper discusses the various issues related to the surrogacy, the laws related to it, the impact for the same on the society, its overall acceptance and also the various issues regarding the same.



JUS IMPERATOR

Introduction:

Surrogacy has evolved as a new term in the field of medical these days. The term surrogacy not only is a way to help a pregnant mother to let her child be born from the womb of another lady but also has emerged as one of the fundamental rights these days. Fundamental right in the sense that it helps a lady who is not otherwise able to reproduce a baby give birth to a baby by taking the help of some other woman.

By doing so, not only the right of a woman to enjoy her motherhood but also the right of the child to take birth and live a life with integrity.

There are 2types of surrogacy:

1. Traditional surrogacy
2. Gestational surrogacy

Traditional surrogacy is also known as partial or genetical surrogacy. In this type of surrogacy if the intended father donates his sperm to the surrogate mother, then the child born out of the intended father and the surrogate mother than that child genitically relates to the intended father and that surrogate mother.

If there is any third party other than then the intended parents, if he donates the sperm to the surrogate mother then the child born out of them then the child will genetically relate to the donor and the surrogate mother but not to the intended parents. If the intended parents want the child to be genetically theirs then they have to go through the adoption process.

The insemination can be done either through private process without any intervention of doctor or through the help and guidance of the doctors.

Gestational surrogacy

This is also known as host or full surrogacy. In these an artificial embryo is created and there is various process for the gestational surrogacy. In this the child is only genetically related to the intended parents only.

The more popular and effective method, this procedure involves in vitro fertilization (IVF) with the eggs of the intended mother or those of an egg donor. This means that the surrogate mother is not genetically related to the child. Because this method is more complicated medically, it tends to be more expensive than traditional surrogacy. There are three stages to gestational surrogacy:

- Egg donation—either the intended mother or the egg donor undergoes an egg retrieval procedure.
- Fertilization—the egg is fertilized with semen in the laboratory to create embryos.
- Transfer—the fertilized egg, or embryo, is implanted into the surrogate mother’s womb. This is often referred to as an embryo transfer, or just transfer.

A fertilized egg may be transferred to the surrogate either when it is freshly fertilized, or after it has been taken from cryogenic storage and thawed. In order to prepare for a fresh embryo transfer, the intended mother or egg donor and the surrogate must take hormone pills at the same time to synchronize their cycles. In a situation where the embryos have been thawed, some fertility clinics recommend that the surrogate take hormone medication to prepare the lining of her uterus for the transfer.

The success rate of IVF depends on a number of factors such as the age and health of the woman providing the eggs. Both types of surrogacy are just as safe as traditional pregnancy providing that the surrogate mother undergoes a thorough health screening.¹

History:

The history of surrogacy can be traced back to the early historical period of 70s and 80s. It is also believed that there is a mention about the surrogacy in the Bible. The history proves that there are many changes that have been brought in the legal and the gestational surrogacy, they being the modern methods of surrogacy but the traditional surrogacy is the one that has been used since the ancient times.

It is believed that bible states the instance of a traditional surrogacy in the genesis- Sarah, a lady who was infertile requested her handmaiden, Hagar to carry her husband, Abraham’s child.

¹ www.growinggenerations.com

While traditional surrogacy has been practiced for ages, gestational surrogacy was developed much more recently. In 1978, the first in vitro fertilization (IVF) baby was born. Just five years later, in 1982, the first baby from an egg donation was born. The combination of these two innovative technologies resulted in the **emergence of gestational surrogacy**, which was first performed in 1985 and has grown exponentially in popularity over the past 20 years.²

In 1986, surrogacy encountered its first real legal hurdle when upon giving birth to the child, a traditional surrogate decided that she wanted to keep the child. A two-year-long legal battle between the surrogate and the intended parents eventually resulted in the intended parents retaining custody. As the practice of gestational surrogacy continued to grow, this landmark case, referred to as ‘the Baby M case,’ sparked many legal questions in many countries around the world. Today, **commercial surrogacy is legal in most U.S. states, and a handful of countries including India, Russia, and Ukraine**; however, intended parents from countries where surrogacy is illegal may travel abroad to legally have a child through surrogacy.³

Thus, Surrogacy is something that has not just emerged as a modern term but has evolved periodically since the time it was first brought to the knowledge of the humans. Surrogacy has evolved slowly and gradually with the passing time. While people of the 21st century are debating over the pros and cons of the issue or the matter, it can be clearly proved that there is nothing wrong in using the method for the matter of a child as it has been used since the very earlier times and even a holy book like bible has a mention for the same.

Hence, it can be stated that while the classifications made for the procedure of surrogacy can be categorized as a modern concept, the term surrogacy is not a modern concept for sure. The concept is as old as our history is. The right of a woman to enjoy her motherhood was considered important then and is considered important now too. The history has traces of the usage of surrogacy proving that the right of motherhood is meant to be sustained.

² <http://www.circlesurrogacy.com>

³ <http://www.circlesurrogacy.com>

Legal issues:

Surrogacy is not practiced by all the countries. There have been some ethical and legal implication for its acceptance worldwide. But India has become a popular destination for the surrogacy many couples around the world travel to India where commercial surrogacy is legalized. Commercial surrogacy has been beneficial for all the parties, however there are certain issues that are to be addressed under law and order to protect the rights of surrogate mother and intended parents. In surrogacy a contract has to be made between both the parties, the intended parents and the surrogate mother. It is necessary to protect the interest of both the parties. The compensation is given to surrogate mother and she has to give away the child to the intended parents. The provisions also state that the intended parents cannot change their mind after the birth of the child or during the pregnancy period. The contract has to be made in such a way that surrogate mother should not terminate the pregnancy after getting money. In order to have a valid contract, one has to fulfill the requirements of offer, acceptance, consideration.

In contracts for surrogacy, the offerors are the contracting parents. They offer money to a woman, 'the offeree', to carry a child to term to which she will not have a legal claim. Medical bills for both routine check-ups and complications are included as part of the costs for which the offerors will pay. Many offerors will also pay the living expenses of the offeree during the pregnancy. Acceptance occurs when the surrogate signs the contract and complies with the contracting parents' terms, such as medical check-ups. Consideration is exchange of money for the services of the surrogate. However, forbearance can serve as consideration in a contract. Forbearance in the context of contracts means that the offeree has given up something that she had a legal right to do. Even if the contract is altruistic; it will serve as a consideration due to result of love or affection towards the intended parents. By examining basic contractual terms, it is evident that surrogacy contracts encompass the necessary elements of a valid contract.⁴

Celebrity impact:

⁴<http://shodhganga.inflibnet.ac>.

The society copies each and every thing from the celebrities right from eating to dressing, the society follows them almost blindly. Many celebrities also have opted for the surrogacy which also influence people which has increased the number of the surrogate babies. Celebrities have taken the full advantage of surrogacy. We have few live examples.

The famous football player *Cristiano Ronaldo* has surrogate babies. He has used the surrogacy twice, once he had a son and the second time he welcomed his twin babies.

Michel Jackson's youngest son prince Michel Jackson-II was born via surrogate in 2002, after his death.

producer and actor *Karan Johar* became the father of twins – a boy and a girl – through a surrogate mother. While the name of the mother remains undisclosed in BMC records, Johar is listed as the father.⁵

Advantages and disadvantages of Surrogacy:

Advantages:

- Intended parents are incompatible to bear pregnancy because of fertility issue so for them surrogacy becomes the ideal option.
- There may be some physical complications through which the intended parents could not own a child so there is no option left for them.
- Multiple times of abortion of the intended mother can cause difficulty in conceiving again and have a healthy baby.
- Due to the failure of IVF procedure there is no option left then the surrogacy to have a genetical child.

All the above-mentioned reasons for the surrogacy are the most important causes which can help to boom surrogacy in the Indian states.

As India is considered as the most affordable and famous country for the surrogacy

Disadvantages:

⁵<http://indianexpress.com>

- To some extent the contract of surrogacy becomes morally questionable because it itself is “sale of self”
- It is not an easy task to become a surrogate mother which also leads to physical and emotional problems. For example, If there is any mistake in the process the baby may die inside the womb that causes both physical and emotional stress to the surrogate mother.
- The women who are uneducated would only become easily ready and who are in the need of the money. Without knowing the side effects, they sign the surrogate contract.
- Many women are forced for becoming the surrogate mother and are exploited.
- Legal problems may also arise if the surrogate mother changes her mind and wants to keep the custody of child with herself.

Thus, surrogacy is not a easy thing or process to be accepted or adopted by everyone because all the expenses are carried out by intended parents from medical expenses to fess of surrogate.

Present situation:

- According to the surrogacy bill passed in 2016 the certain laws were amended so that the women are prevented from exploitation.
- The couple must be an Indian citizen and one of them must be infertile and should be married for at least 5 years.
- The surrogate mother should be the close relative of the intended couple and must have a child of her own. And any kind of monetary payment is not given other than the medical expenses.
- The child born out of the surrogate mother would be considered as the biological child of the intending couple.
- The central and state government will issue an eligibility certificate to the intended parents and the surrogate mother. Those who will issue certificate will also regulate surrogacy clinic.

- If anyone is found taking fees, advertising it or exploiting the surrogate mother, will be punished with imprisonment for 10 years and fine up to 10 lack rupees.
- The single parent, Indian couple having children, foreign couple, homosexual-gay couple and lesbian couple, living in relationship who don't want to be get married, all of them will not be allowed to avail the surrogacy.

The 2016 bill and its Pros and Cons:

The Bill passed in the year 2016 carries with it few advantages and disadvantages with it. Few of them are discussed herein below:

Pros:

- No money will be paid other than medical expenses so the women will be prevented from the exploitation who were doing this just for the sake of the family.
- It protects the physical and emotional conditions of the surrogate and she cannot go under repeated surrogacy.
- The child will also be safe if the intended parents leave the child under any circumstances so the surrogate mother can look after that child as she is the close relative of the intended parents.

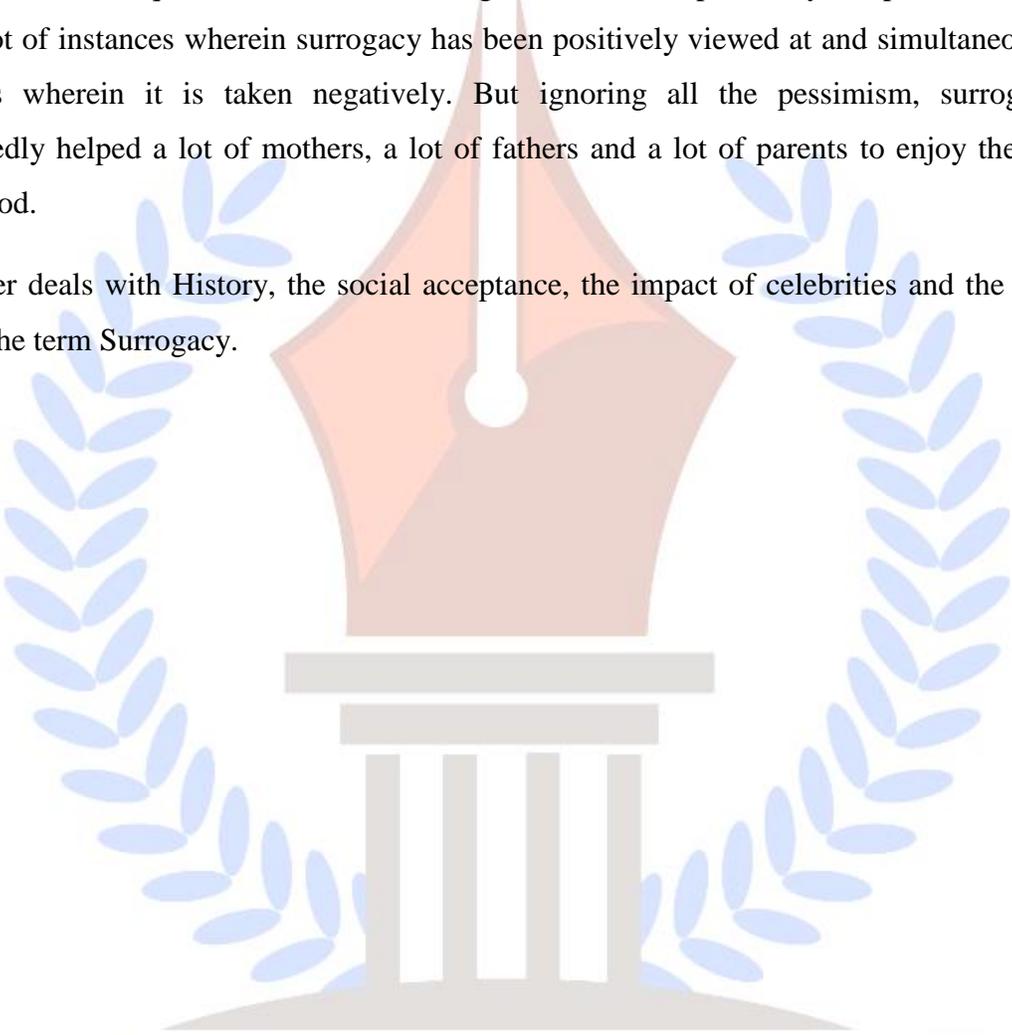
Corns:

- There is only one major drawback of the bill 2016 that is
- It restricts the right- right to have children as the single parents, homosexual, live in relationship couples are not allowed to have baby through surrogacy.
- It also restricts article- right to livelihood as each and every person has the right to live the life full of dignity as they also want that they should also have their own children to carry their identity.

Conclusion:

It can be concluded that surrogacy as a term has a wide aspect of issues to be dealt within. Moreover, there is a lot of development that has took place and a lot of development that still remains to take place with regards to the term surrogacy. It carries with it its own shares of pros and cons. It still requires a lot of acknowledgement and acceptance by the public. There have been a lot of instances wherein surrogacy has been positively viewed at and simultaneously few instances wherein it is taken negatively. But ignoring all the pessimism, surrogacy has undoubtedly helped a lot of mothers, a lot of fathers and a lot of parents to enjoy the right of parenthood.

The paper deals with History, the social acceptance, the impact of celebrities and the pros and cons of the term Surrogacy.



JUS IMPERATOR